K 19/6

File No. Tenancy II/46

Legal Department

B **BRANCH**

Subject:— Rules and Notifications under the Bombay Tenancy Act 1939

II/46

File No. Tenancy II/46

Gen. 191 e.

293-B

NOTIFICATION. I

Revenue Department.
Bombay Castle. April 1946.

Bombay Tenancy, Act. 1939.

No. The Government of Bombay is pleased

(1) in exercise of the powers conferred by sub-section (2) of section 1 of the Bombay Tenancy Act. 1939 (Bom. XXIX of 1939). to extend the provisions of sections 2 to 30 (both inclusive) of the said Act to the Districts specified in the Schedule hereto appended; and

(2) to direct under sub-section (3) of the said section 1 that the said provisions shall come into force in the said districts on the ..... day of April 1946.

Schedule.

Ahmedabad District.

Kaira District.

Panch Mahals District.

Broach District.

Bombay Suburban District.

Ahmednagar District.

East Khandesh District.

Nasik District.

Poona District.

Satara District.

Sholapur District.

Belgaum District.

Bijapur District.

Kanara District.

Kolaba District. | (excluding the villages held by khots to which the Khoti-Settlement Act. 1850 (Bom. I of 1850). extends).

Ratnagiri District. |

By order of the Governor of Bombay.

Secretary to Government.

w/617

NOTIFICATION. II

Revenue Department

Bombay Castle. April 1946.

Bombay Tenancy Act, 1939.

No. .- The Government of Bombay is pleased -

(1) in exercise of the powers conferred by sub-section (2) of section 1 of the Bombay Tenancy Act, 1939, (Bom. XXIX of 1939), to extend the provisionsof sections 2 and 14 to 31 (both e inclusive) of the at said Act to the villages held by khots in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act, 1880 (Bom. I of 1880), extended and

(2) to direct under sub-section (3) of the said section 1 that the said provisions shall come into force in the said villages on the ..... day of April 1946.

By order of the Governor of Bombay.

Secretary to Government.

S.A.K.
14-7
4 copies

Office of the R.L.A.

Revised draft Notifications are sent herewith.

2. In regard to notification No. II, section 2 which is a definition clause has also been extended to the villages in question.

Sd/-P.N.Moos
8-4-46

Remembrancer of Legal Affairs.

U.R. to R.D.No. 2657, dated the 5th April 1946.

S.A.K.
14-7
4 copies

Office of the R.L.A.

Paragraph 3 of Secy. R.D.'s note.- Since the tenancy year ends on 31st March , in the absence of any agreement to the contrary, under section 84 of the Bombay Land Revenue Code, 1879, the rent from the tenant becomes payable on the last day of the fin-ancial year, namely, 31st March. Section 17 of the B ombay Tenancy (Amendment) Act, 1946, merely adds a proviso to sub-section (1) of section 15 of the principal Tenancy Act of 1939 to the effect that the maximum rate of rent to be fixed by the Government under sub-section (1) of section 15 shall not exceed a certain proportion of the crop or its value. Under sub-section (1) of section 15, it is necessary for the Provincial Government to fix by a notification in the Official Gazette the maximum rate of rent payable by tenants. Unless and until this notification is issued, a tenant would not be within his rights in paying one-third/rent share in case of dry crop lands and one-fourth crop share in case of irrigation crop lands, even if the new amending Act is brought into force under sub-section (3) of section 1 before the 31st March next.

2. The view taken by Secy. R.D. in para. 3 o is therefore correct on the presumption that immediately the amending Act is brought into force, a notification will be issued under sub-section (1) of section 15 of the principal Tenancy Act of 1939 fixing the maximum rates of rent.

Sd/-A.R.Khan

For Remembracer of Legal Affairs.

U.H. to R.D.,No. Mil , dated the 14th October 1946.

S.A.K.

14-7
4 copies

Office of the R.L.A.

The draft Tenancy Rules the Forms and the Schedule at pp. 3-25 , as amended, are in order.

2. The rules require previous publication under section 27(3) of the Bombay Tenancy Act, 1939. The requisite draft for the purpose is appended.

3. Rule 3.- Sub-rule (1) of rule 3 regarding the appraisement of the crop-share payable as rent is not in order. The latter part of the sub-rule is a repetitionof the provisbon contained in sections 5 and 13A. It is strictly not necessary and seems to be outside the scope of the Act. The object of prohibiting the landlord , in cases where there is a dispute as to the rent payable by the tenant, from recovering from the tenant as rent anyth ng in excess of the maximum fixed by Government under section 15(1) read with the proviso, will be achieved by the notification recently supplied by the R.L.A. for the purpose

Sub-rule (3), which provides that the tenant shall be entitled to remove the entire crop from the threshing floor where the landlord declines to receive or the tenant refuses to give the share of the actual produce as determined under sub-rules (1) and (2) , does not fall under any of the rule-making provisionsof section 27(2).

The Rule is recast in the light of the above observations.

4. Rule (5).- The concluding portion that applications to the Provincial Government need not bear any court-fee stamp has thm been omitted as such applications are not saved by section 12(10) . If it is the intention of Government to exempt these applications from court fee, action will have to be taken under section 35 of the Court-fees Act, 1870 .

5. Rule 7.- The proviso which refers to the reasonable rent not being in excess of the maximum fixed by Government under

S.A.K.
14-7
4 copies

section 15 has been omitted. Section 14A read with section 12(5)(g) only provides for the makingof rules prescribing factors other than those mentioned in clauses (a) to (f) of sub-section (5) to be considered in determining reasonable rent.

6. Form IV under rule 8.- This is a form of application by a protected tenant under section 7(2A). This sub-section requires a landlord intending to lease out any a land first to offer it in in writing to one of the protected tenants whose tenancies have been terminated by him under sub-section (1). The reference to tenant has, therefore, been changed to protected tenant.

7. The Schedule referred to in rule 12(2) at the end of rule 15 in the R.D. draft has been transposed after the Firms. The fee mentioned in column 2 is a percentage on the value of the house site. In the case of the value being an odd figure , it may lead to difficulties in calculating the court-fee. R.D. might consider whether fractions of a hundred rupees may not be ignored.

8. A copy of para. 3 of the note of Secretary, R.D. dated 17th October 1946 at p. 1 has been kept in this department and steps are being taken to have the Bombay Tenancy Act, 1939, reprinted as soon as possible.

Sd/-
15-1

for Remembrancer of Legal Affairs.

U.R. to R.D.No. 8052, dated the 15th November 1946.

S.A.K
14-7
4 copies

Office of the R.L.A.

Secretary R.D. discussed with R.L.A. the draft Tenancy Rules. In the light of the discussion the following may be substituted for paragraph 3 of R.L.A.'s opinion No. 8052, dated the 15th November 1946.

3. Rule 3- Sub-rule (1) of rule 3 regarding the appraisement of the crop-share payable as rent is not in order. The latter part of the sub-rule is a repetition of the provision contained in sections 5 and 13A. It is strictly not necessary and seems to be outside the scope of the Act. The objection of prohibiting the landlord , in cases where there is a dispute as to the rent ~~payable~~payable by the tenant, from recovering from the tenant as rent anything in excess of the maximum fixedby Government under section 15(1) read with the previso, will be achieved by the notification recently supplied by the R.L.A. for the purpose.

Sub-rule (3) which provides that the tenant shall be entitled to remove the entire crop from the threshing floor where the landlord declines to receive or the tenant refuses to give his share of the actual produce as determined under sub-rules (1) and (2), does not fall under any of the rule-making provisions of sub-section (2) of section 27. As, however, Secretary R.D. desires that the proposed provision should be included in the draft rules, it may be retained as covered by the general rule-making power conferred by sub-section (1) of section 27 in the following form as sub-rule (2) renumbering rule 3 as 3(1) :-

"(2) In case the ~~a~~ landlord declines to receive or the tenant refuses to give the share of the actual produce as determined under sub-rule(1), the tenant shall be entitled to remove the entire crop from the threshing floor and the landlord shall be entitled to recover his rent by proceeding under section 86 of the Bombay Land

S.A.K.
14-7
h cmsiss

Revenue Code, 1879 ".

Sd/- [illegible]
P.M.Moos
19-11-46

Remembrancer of Legal Affairs.

U.R. to R.D.No. 8253, dated the 20th November 1946.

S.A.K.
14-7
4 copies